

PDPPC **DRAFT** Meeting Minutes September 24<sup>th</sup>, 2015

For approval at October 2015 PDPPC Meeting

John Barry and Kevin Smith called the meeting to order at 1:00 PM

**Present on the phone:** Margaret Proctor, Stephanie Holsinger, Kelly Morrison, Dyann Walt, Heather Jones, Craig Morrison, Renee Farmer, Hanni Raley, Sueann Hughes, Tim Moran, Kelly Brown, Cathey Forbes, Leslie Taylor, Anne Dyer, Jenny Smith, Brent Salner, Kathy Estes, Diane Alverigi, Liz Wuest, Ellen Caruso, Veronica Brennan, Connor MacLeod, Kari Vinopal, Keith Copen

**Present In the room:** John Barry, Debbie Miller, Jennifer Martinez, Sharita Richmond, Keith Copen, Gabrielle Steckman, Colin Laughlin, Grace Herbison, Bonnie Rouse, Rhyann Lubitz, David Bolin, Kevin Smith, Kirk Miller, Jeff Pratt, Jason Smith, Sara Horning, Caitlin Brady, Linda Medina, Candie Dalton, Jose Torres-Vega, Paige Kelly, Gerrie Frohne, Roberta Aceves, Bonnie Silva, Kelly Tobin, Linda Andre, Cheryl Vennerstrom, Alisha Singleton, Betsy Murray, Louise Apodaca, Natalie Armstrong

Excused: Julie Reiskin, Curt Wolff, Linda Skaflen, Anaya Robinson, Christina Ullmer

*Voting Rights/Attendance:* Sara Horning/John Barry reviewed voting rights and attendance and organizational representatives for voting purposes were confirmed. If anyone's name is spelled wrong please email Linda Skaflen at [lskaflen@arcadams.org](mailto:lskaflen@arcadams.org) or call John Barry at 303-866-3173

*Agenda:* The agenda was deemed acceptable.

*August Minutes—* Kelly Tobin listed as on phone but was in room. Clarify sentence regarding IHSS data to add an "a", No other corrections to the minutes were requested.

***David Bolin moves and Alisha Singleton seconds that the minutes are approved as corrected. Carried unanimously.***

Amended Draft of Voting Structure: Rhyann presented on behalf of Linda Skaflen a change to the voting structure. Changing: list FMS Vendor instead of PPL, aligning IHSS voting options match CDASS voting options, clarifying definition of advocacy organization. Leslie Taylor requested to table this item until Julie Reiskin was present to participate in the review/discussion. David Bolin stated he worked in conjunction with Julie/Linda S. and both wanted this item voted on today. Kevin Smith agreed. Leslie discussed concerns regarding IHSS and CDASS agency voting percentage. Kevin asked if there was a motion to vote or table this item. Leslie made a motion to table this item, David seconded motion to allow vote. Vote was taken in the room. 7 voted to table, 9 voted to not table.

Caitlin asked about a line item on the voting structure "State employees representing HCPF or CDHS in any capacity should not have a vote. Representatives of those departments have the option to refuse implementation of any recommendations from the PDPPC."

Robust group discussion regarding this topic. Caitlin requested if HCPF staff deny a request made by the PDPPC that this denial be made in writing and cite the rule or statutory provision as to why the request is denied. John stated written recommendations are submitted by PDPPC to HCPF. Then HCPF staff responds in writing within a designated timeframe per PDPPC agreement.

Caitlin/Jose discussed the 2 signature rule for CDASS attendant timesheets. Rhyann stated the PDPPC is the policy committee and she has not seen a written recommendation on this item from PDPPC. This issue was discussed at PDPPC in June, July and August. Rhyann stated the rule was reviewed and in working with legal/program integrity she cannot change the rule. PDPPC voted in August whether PDPPC should bring a rule change to MSB. The

voting result was no. Linda A stated Mark Simon was going to bring this item to MSB outside of PDPPC.

Linda Medina asked if we could strike sentence "Representatives of those departments have the option to refuse implementation of any recommendations from the PDPPC." David Bolin made a motion to make the following change "State employees representing HCPF or CDHS in any capacity ~~should~~ will not have a vote. ~~Representatives of those departments have the option to refuse implementation of any recommendations from the PDPPC."~~

There was a vote regarding approving the voting structure based on these changes: voted was approved with 2 members not in favor. John Barry will make change to document.

*SLS: ROBERTA ACEVES*

Center for Medicaid and Medicare Services (CMS) have sent the Department a request for additional information regarding the SLS waiver submitted to add CDASS into the waiver. These questions are related to CDASS and also general SLS waiver questions that are not related to CDASS. Roberta is working on answering these questions to return to CMS by October 8<sup>th</sup>. Gerrie requested a copy of the questions that CMS had. Roberta stated she is not certain if she is able to provide these to the group but will find out. Gerrie stated she was concerned when the response to this will be provided and wants to see questions before the response is sent to CMS. Roberta will look into this and will notify PDPPC as soon as possible. Gerrie asked if the rules for CDASS/SLS would be going to MSB before CMS waiver approval is completed. Roberta said we could hold back the rules, but if this is choice, then it would delay the implementation of CDASS in SLS by several months. Roberta stated there is language in rule that CDASS will not be implemented into SLS until CMS approval has been received. Kirk Miller asked if PDPPC can review questions from CMS and participate in answering them. Roberta stated the responses are due to CMS by October 8<sup>th</sup> and this is a tight timeframe to

provide answers to CMS. Roberta will research this further and notify PDPPC either by email or in person.

*IHSS UPDATE: GRACE HERBISON/COLIN LAUGHLIN:*

August 2015 there was a motion by PDPPC to decouple IHSS from other issues in waiver approval process. The motion is to just do amendment for HB 14-1357 to make the IHSS changes (relative personal care, services in the community, proposed plan for waiver expansion, allow spouse to provide care and allow client to decide level of nurse oversight). Colin stated waiver amendments are not stand alone items. CMS approaches changes as substantial and in order to bring changes forward we need to have a waiver amendment. If we try to separate items out from the waiver amendment, we would have multiple waiver amendments to CMS that were overlapping and/or leaving items out (home modification funding increase, IHSS changes, etc). At present, multiple waivers are in public comment process and then will be submitted to CMS. Participation in public comment is encouraged. David Bolin stated legislature passed a law signed by the governor but then nothing happens. This is concerning and frustrating. Colin understands this and would like to partner to get waiver amendments moving forward.

Grace stated HCPF budget staff are able to participate in the PDPPC meeting by phone in November to discuss/answer budget questions regarding the IHSS expansion plan.

Grace stated IHSS rules were reviewed by the Office of Legal Legislative services. There are a few areas of the rule that may require change to align with statute. These areas are not related to the areas we changed in March 2015. We may need to do an emergency rule change.

*CDASS RATE CHANGE: RHYANN LUBITZ*

Rhyann stated the 10.1.15 rate change 30 day notices were sent to clients in August. The Dept tried a new process this year to implement the rate changes. This process did not go well due to issues with the data received. Therefore the prior/original method was used instead. This caused a very tight timespan for case managers to send clients the 10 day notice for allocation changes. Rhyann asked people to outreach her if they experience any issues with their rate change.

Leslie asked if FMS vendors have created a new show me the money table. FMS vendors stated this is updated in January every year and won't require an update now because there is not a change to employer tax/fee. Jose asked if we are encouraging individuals to give raises to their attendants with this rate increase. Rhyann stated this is based on your needs and how you are directing your care, this is client budget authority. FMS vendors have been informed to freeze their budget display for client allocations to not change the pre 10/1 allocation amount. Cathey stated she received her allocation increase in the mail and she wanted the group to know it's not a substantial increase. Rhyann stated the increase is 0.5%.

#### *TIMESHEET COMPLETION: RHYANN LUBITZ*

Rhyann checked to see if she can change the work flow on how timesheets are completed. The way it works now: first the attendant fills in hours and then the client or AR approves. Rhyann checked to see if the work flow can be changed to allow client/AR to create the timesheet and then attendant approves. Rhyann stated this change would not be able to happen as she checked with HCPF legal division. The attendant creates the timesheet to mirror requirements of providers in MMIS (Medicaid Managed Information System) which are subject to fraud prosecution by the Medicaid Fraud Control Unit. In order for the attorney general's office to meet the burden of proof in these prosecutions they must show beyond a reasonable doubt that the attendant/provider intended to overcharge Medicaid. The process of having the client create the entry with attendant

verification will present a he said/she said situation making it impossible to prosecute fraud for false claims in CDASS.

Jose said he understands/respects intention of having 2 signatures on timesheets. Jose stated when looking at CDASS rules, the FMS could be considered the provider but the client is not the provider. Jose discussed concerns regarding the difficulty to have an attendant create a timesheet on their own, not everyone is computer savvy to do this. This is a burden to clients and attendants. He is concerned this requirement may create fraud, cause late payments to attendants, is not a labor law requirement, etc. The current process has worked and there has not been fraud. Louise stated she lost an attendant because the attendant was not able to do the computer process of timesheets. Several members of group agreed and expressed concerns with attendant needing to sign timesheet or create timesheet electronically.

Caitlin asked for the department to provide the rule that states signatures are required. Rhyann stated the rule is 8.510.6.A.9 and read rule.

Rhyann asked if group would move to FLSA agenda item because this topic was discussed at prior month's meetings. Jose asked if the implementation date could be delayed to December 1<sup>st</sup> to allow for an emergency rule change to MSB. Rhyann stated PPL has been messaging October 1<sup>st</sup> implementation date to clients since July. Jose asked if all FMS vendors could not require both signatures until December 1<sup>st</sup>. Group voted to move to topic of FLSA. Jose asked if Department could delay signature implementation. Rhyann will review implementation date and send out email to PDPPC regarding this.

#### *FAIR LABOR STANDARDS ACT:*

FLSA requires overtime and travel time costs for attendants must be paid with the implementation of FLSA. Rhyann stated additional funding is not available to cover the travel and overtime costs. How does PDPPC wish to address FLSA? Leslie suggested we could create a separate fund from

allocations that FLSA costs could be paid through. Louise asked what other states are doing. Rhyann stated Texas is implementing an hourly work week cap for attendants. Rhyann stated November 2014 PDPPC meeting discussed FLSA. At that time the group discussed splitting travel time costs amongst all clients. No consensus regarding overtime then at that time. Liz asked if there was an established federal rate for travel time. Rhyann said we must meet minimum wage requirements. Keith suggested if Funds for Additional Services (FAS) could be reinstated then we could pay through this. Gerrie suggested legislation be developed to have a budget request starting July 1<sup>st</sup> 2016 to cover FLSA costs. Louise asked who is the employer of record? Jennifer (PPL) stated it depends on the model. If the client is Agency with Choice then FMS is employer of record. Fiscal Employer Agent model then the client or another representative is the employer of record. If an attendant is working for 2 clients under AwC using PPL, PPL is the employer for the attendant on both timesheets. Timesheets submitted to total past 40 hours would require overtime would need to be paid as PPL is the employer. If an attendant is working for 2 clients, 1 using AwC and other F/EA model, there would not be shared overtime. This would be like the same person working for Target and Walmart. We don't need to combine the hours. Gabrielle stated many states are limiting hours over 40. Cheryl (Morning Star) stated there is no definitive advice from the National Resource Center for Participant Directed Services. Many states are taking a wait and see approach. Keith asked if we have to pay time and a half for overtime. Rhyann said yes. Caitlin asked if more funding could be pursued. Rhyann stated that we need to look at every other option due to tight budget/limited resources. Louise suggested 0.5% rate increase be used to pay for travel and overtime costs.

#### New Business/Public Forum:

Gerrie asked for status update regarding Joint Budget Committee meeting last week. Sarah said not much came out of meeting. Sarah will talk with

Gerrie to share information from that meeting. Gerrie wants the question in the meeting minute notes for a future meeting agenda topic

Cathey: Christina Ulmer asked for her email to be shared with anyone who wants to participate in client driven attendant registry

[CUonwheels@gmail.com](mailto:CUonwheels@gmail.com)

Caitlin asked about the status of the FMS comparison sheets that include liability information. Rhyann answered and stated in earlier PDPPC meeting that the present FMS comparison forms were going to be used/no additional changes made at that time because we needed to move forward and get clients comparison sheets prior to open enrollment.

Caitlin stated today was a holiday and therefore some members of PDPPC could not attend due to the holiday. John stated this was discussed in the group earlier and the group decided to keep today's meeting date/time.

The meeting adjourned at 4:00 p.m.